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MEMORANDUM

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE

SUBJECT: Interim Final Guidance on Preparation of Superfund Memoranda of Agreement (SMOAs)

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TO: Director, Waste Management Division  
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Director, Hazardous Waste Management Division  
Regions III, and VI  
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Region IX  
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Attached is Interim Final Guidance on Preparation of Superfund Memoranda of Agreement (SMOAs). The Office of Emergency and Remedial Response (OERR) and the Office of Waste Programs Enforcement (OWPE) issued a draft of this guidance on October 23, 1987. The draft guidance was revised in September, 1988. The revised draft guidance adopted a less legalistic tone than the earlier draft guidance, and clearly indicated that the content of a SMOA may be adapted to the needs of a particular State and the respective EPA Region. It also explained that EPA and the States may (and in certain situations, must) use SMOAs to record or establish general program coordination procedures. SMOAs should not be attached to site-specific or non-site-specific funding transfer mechanisms. The Interim Final Guidance has incorporated the comments received from the reviewers on the revised draft guidance.

PURPOSE:

The SMOA is a result of EPA's continuing effort to improve the quality of communication with States in the conduct of the Superfund Program. SMOAs are currently not required under either the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), or under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). They will not be required under the proposed NCP except when States wish to recommend the remedy or to be the lead agency for nonfund-financed activities at NPL sites. Consequently, the guidance does not describe Superfund operating procedures, but rather suggests what a SMOA might contain and how it might be organized.

The SMOA is a non-site-specific consultation mechanism that has been proposed in the NCP. It should be designed to help EPA and the States avoid contention regarding site-specific cleanup efforts through prior, mutual agreement on general roles and responsibilities. While clearly defining these responsibilities, however, the SMOA should avoid a legalistic tone or style. The SMOA is not a legally enforceable document, and it cannot transfer Federal monies or authority to a State. A SMOA cannot alter or circumvent CERCLA statutory requirements or other regulations which impact EPA/State assistance relationships (i.e., Superfund Cooperative Agreements).

The SMOA's purpose is to facilitate communication, affirming or resulting in a mutual understanding between EPA and a State of each party's roles and responsibilities during CERCLA response activities. It may be necessary to detail these roles and responsibilities in the SMOA if a State has not been heavily involved in remedial response activities prior to development of the SMOA. EPA should agree to enter SMOA discussions at a State's request if the State has the capability to undertake lead agency response activities, but EPA may not impose a SMOA on a State.

### **BACKGROUND:**

SARA expanded the scope of State involvement in all phases of hazardous site response under CERCLA. This increased emphasis on the EPA/State partnership has highlighted the need for EPA and States to document their operation and interaction procedures to increase efficiency and minimize duplication of effort in conducting the Superfund program. The SMOA is one of many mechanisms which should be used by EPA and States to achieve maximum benefit and flexibility from increased State involvement in the Superfund Program. EPA's Guidance on Program Analysis for Remedial Decision-Making, currently being drafted by OERR, will provide a framework within which EPA and a State may discuss the level of involvement of the State in remedial activities, allowing them to agree upon program-building steps the State might take to increase its role as a lead agency. Core Program Cooperative Agreements (CPCAs) transfer Superfund money to States to fund non-site-specific administrative and program support activities. Cooperative Agreements (CAs), on the other hand transfer Superfund money to State or local governments to conduct specified site-specific response activities. The relationship of these regulations, policies and guidances to the SMOA is discussed further in the following paragraphs.

### **Relationship Between SMOAs and the NCP:**

The SMOA articles provided as examples in the draft guidance correspond to the major points of EPA/State interaction to be set forth in the proposed NCP. A SMOA should indicate the respective procedures that EPA and the State intend to use in carrying out provisions of the proposed NCP. A State and EPA may agree, in a SMOA, to alter certain review periods otherwise prescribed in the proposed NCP in the absence of a SMOA (see Section 300.505 (a)(4) and 300.515 (h)(3) of the proposed NCP). The attached matrix "Analysis of SMOA Relationship to the Proposed NCP" summarizes those points of EPA/State interaction for which the proposed NCP provides greater flexibility when a SMOA has been signed. It should be noted that the proposed NCP will be subject to public review and may change prior to issuance in final form.

While SMOAs completed during the next several months may require revision following promulgation of a final NCP, this "timing" problem need not detract from the constructive role SMOAs can play in improving the quality of EPA/State interaction. The value of establishing or improving channels of communication through the SMOA process should outweigh the inconvenience of a SMOA revision.

Positive changes in State program sophistication and response capabilities are desirable developments, and more frequent SMOA modifications may be necessary for States whose programs and capabilities are evolving rapidly. Frequent communication is especially critical under these circumstances. For States already heavily involved in the EPA/State partnership under CERCLA, the body of the SMOA may require significant revisions only when necessitated by changes in State or Federal laws or regulations, or when desired by the parties.

#### Relationship Between SMOAs and CPCAs:

EPA and States should consider carefully how SMOAs and non-site-specific CPCAs may work together as part of an overall strategy to improve communication and response capabilities. A SMOA is optional except in those cases mentioned above, and is not a condition of eligibility for receipt of Core Program funding. Funding for SMOA development is an allowable expenditure under a CPCA, however, and States may request CPCA monies before commencing SMOA discussions.

The SMOA and the CPCA are independent documents. The CPCA is a legally binding assistance agreement that provides funding for non-site-specific Superfund support activities. The purpose and scope of the CPCA is not coterminous with the SMOA. If there are agreements between EPA and a State during SMOA discussions relating to the functional tasks funded in the CPCA, which EPA desires to make binding, these points may be addressed in CPCA negotiations, separate from any SMOA agreement.

If EPA and a State agree during SMOA development that the State shall be responsible for certain non-site-specific activities or tasks, and if such tasks are to be funded through a CPCA, EPA may request that the State include these activities in the work plan to be submitted in its application for CPCA funds.

For example, the State Office of Attorney General (AG) may provide general legal support critical to a particular State lead agency's involvement in overall CERCLA implementation. The potential level of involvement of the State lead agency depends, in part, on the capacity of the AG to provide adequate and timely general non-site-specific legal support to the program. EPA and the State lead agency may agree to delineate in a SMOA the nature and extent of AG involvement in the State's overall Superfund program. To ensure that the AG has sufficient capacity to provide adequate support to the State lead agency, EPA or the State may suggest that those non-site-specific tasks to be performed by the AG, as explained in the SMOA, be included in the lead agency's CPCA work plan.

In the CPCA work plan, the State lead agency must identify the particular non-site-specific tasks the AG will perform, and it must indicate the dollar amounts requested for those tasks. Any CPCA funding subsequently awarded to the State lead agency for these tasks may then be "passed through" by the State lead agency to the AG. Site-specific funding for AG activities must be included in, and charged against, a separate Cooperative Agreement (CA) negotiated for a particular site.

#### Relationship Between SMOAs and Guidance on Program Analysis for Remedial Decision-Making:

The scope of the national hazardous waste problem which EPA is mandated to address has expanded dramatically since the inception of the Superfund Program. EPA has recognized that despite the increase in size of the Hazardous Substance Superfund, availability of EPA staff and funding has not kept pace with the demands placed upon these resources. In

addition, CERCLA, as amended, mandates that EPA will provide "for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State" (Section 121(f)). The SMOA facilitates greater involvement by States in remedial activities, and helps to avoid duplication of EPA and State efforts. EPA must be certain that the quality and consistency of cleanup efforts are achieved and maintained.

In determining whether a State should accept additional lead agency responsibility, EPA and the State should examine resource availability and legal authorities. To address this issue, the Office of Emergency and Remedial Response (OERR) is developing "Draft Guidance on Program Analysis for Remedial Decision-Making." The guidance will help EPA and the State allocate lead responsibility for the Remedial Investigation/Feasibility Study (RI/FS) and Remedial Design/Remedial Action (RD/RA), and possibly for drafting of the Record of Decision (ROD). The primary purpose of the program analysis process is to provide a sound basis upon which EPA and a State may make lead agency designations. EPA and State resources are used less efficiently when a State accepts greater remedial responsibilities than its resources or expertise will allow or when EPA oversight is greater than necessary. The secondary purpose of the process is to assist a State in identifying aspects of its program which may require additional resources or expertise if the State wishes to assume a greater level of responsibility for remediation of sites within its boundaries.

In addition to assuming lead agency status for RI/FS and RD/RA, a State must have a SMOA in place to recommend a remedy for EPA concurrence. Through the SMOA, EPA and a State can agree on their respective roles regarding the major points of program management and interaction, and may establish or improve an ongoing communication process. In utilizing the program analysis process on an annual basis, EPA and a State may agree on the optimal level of involvement by a State, and on whether the State seeks or desires that level of involvement.

## RESPONSE TO COMMENTS

Comments on the Revised Draft were received from three Regions. While some reviewers suggested clarifications and wording changes, the major theme of the comments was concern regarding implementation of the concurrence concept. This concept is explained in the Preamble to the Proposed NCP; the Interim Final Guidance incorporates the concept in a manner consistent with the Proposed NCP. The following comments are representative of concerns expressed by EPA Regions.

### (1) Comment:

"...why not say that States are not given the blanket "ok" to select the remedy but can, on a site-specific basis, be designated under a cooperative agreement to have this role?"

### Disposition:

We agree, and we have tried to indicate throughout the guidance that lead designations must be agreed upon by EPA and the State on a site-specific basis as part of the annual planning process. The SMOA represents general agreement between EPA and a State regarding their responsibilities when in lead and support agency roles, and their coordination procedures, usually independent of site-specific lead designations. Indeed, the general terms in a SMOA may be altered in a site-specific Cooperative Agreement, if necessary. An attachment to the SMOA may document lead designations, to be updated annually.

Furthermore, the following language from the Preamble to the Proposed NCP explains that States are not provided the "blanket ok" to select remedies at NPL sites:

Under this approach (concurrence), a State can recommend a remedy for EPA concurrence and adoption only when a SMOA is established. Through the annual planning process, EPA and the States will designate at which State-lead sites the State will prepare the ROD for EPA concurrence and adoption.

EPA intends to implement selectively the process of State preparation of RODs for EPA concurrence and adoption at State-lead Fund-financed sites, since this process is not necessarily applicable to all States, nor for all sites within a State. Sites will be selected where the circumstances at the particular site warrant less EPA involvement and the State has demonstrated its capability to conduct remedial response actions in an effective and responsible manner. (Preamble, Subpart F, A, #9)

(2) Comment:

"EPA should retain an approval role over selection of remedy regardless of whether it has a lead or support role."

Disposition:

We agree. However, a distinction must be made in this regard between non-Fund-financed State-lead enforcement sites and Fund-financed State-lead sites. EPA and a State may agree that certain sites will be designated non-Fund-financed State-lead enforcement actions. At such sites, a State may proceed without EPA concurrence, though concurrence is advisable as an inducement to PRPs to settle with the State, to avoid the need for additional actions, to expedite the deletion process, etc.

The following language from the Proposed NCP demonstrates the need for EPA approval of States' recommended remedies for Fund-financed sites:

Unless EPA concurs in writing with a State-prepared ROD, EPA shall not be deemed to have approved the State decision. A State may not proceed with a Fund-financed response action unless EPA has first concurred in and adopted the ROD. [(300.515(e)(2)(ii))]

Thus EPA does retain an approval role when it is acting as support agency and Federal funds are being used.

We believe that the Interim Final Guidance is consistent with the NCP in this regard. For example, concerning review and oversight of response process deliverables, Part 300.505(a) (3) of the NCP states the following:

The SMOA may describe general requirements for EPA oversight. Oversight requirements may be more specifically defined in cooperative agreements.

Furthermore, in Part 300.505(a)(4)(i):

The SMOA may describe the general nature of lead and support agency interaction regarding the review of key documents and/or decision points in pre-remedial, remedial, and enforcement response. The requirements for EPA and State review of each other's key documents when each is serving as the support agency shall be equivalent to the extent practicable.

Attachment 1 of the Guidance simply provides a sample format for support agency review of deliverables. EPA Regions and States may agree to their own base review levels and time-frames as appropriate.

(3) Comment:

"Enforcement language (in the Guidance) should specify that States may be designated enforcement lead roles if EPA determines that they have sufficient authorities."

Disposition:

The Interim Final Guidance indicates that EPA and a State must agree on their respective enforcement roles and responsibilities. However, if necessary, EPA makes the final determination with regard to formal site-specific lead status, and the nature of State legal authorities comprise a significant element in this consideration. As stated in the Guidance (p.8), "This article ("Enforcement") should also reference State enforcement authorities and the degree of reciprocity between the State and EPA."

(4) Comment:

"U.S. EPA cannot delegate RPM statutory authorities to a State Project Manager. Therefore, the SMOA should not designate the State Project Manager on a State-lead site as the RPM."

Disposition:

First, neither SMOAs nor other EPA-State agreements delegate or transfer EPA statutory authorities under CERCLA. Second, in Part 300.5 of the Proposed NCP, "Remedial Project Manager" (RPM) is defined as: "... the official designated by the lead agency to coordinate, monitor, or direct remedial or other response actions under Subpart E of the NCP.". This new definition makes the terminology for Federal (including EPA and other agencies and departments) and State project managers consistent, and is a logical outgrowth of EPA's concurrence concept. Application of the term "RPM" to State personnel does not convey EPA authorities. Site-specific agreements defining the scope of lead agency authorities and responsibilities may further define the roles of, if appropriate.

# ANALYSIS OF SMOA RELATIONSHIP TO THE PROPOSED NCP

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NCP Citation	Subject	Proposed NCP	Advantage of a SMOA	Action in Absence of a SMOA
§300.180(d)	Lead Agency	Lead agency status may be designated in a SMOA or other mechanism in the absence of a CA or SSC.	SMOA is an alternative mechanism for designating lead agency. SMOAs look at lead designation generically and require overview of how States may be involved.	Lead agency designation must be documented site specifically in another manner i.e., a letter, CA, or SSC.
§300.505(a)	SMOA Required for Broader Role in Partnership	SMOA required for State to be designated lead for non-Fund-financed action at NPL sites or for State to recommend remedy for EPA concurrence.	States can be designated lead for non-Fund-financed actions at NPL sites and can recommend remedy for EPA concurrence.	States do not have the authority to recommend remedies for EPA concurrence, and will not be designated the lead agency for non-Fund-financed actions.
§300.505(a)(1)	EPA/State Interaction	SMOA describes the nature and extent of EPA/State interaction.	SMOA identifies procedures for close cooperation and communication between EPA and the State in planning for response activities and can establish equal requirements for each.	Regulation requires EPA to offer the State an opportunity for involvement; required by §121(b)(1), of CERCLA as amended. No requirements specified for EPA involvement as support agency in State-lead actions.
§300.505(a)(4)(i)	Review of Documents	SMOA identifies which documents prepared during cleanup activities require review, comment and/or approval by the support agency.	Review procedures, timeliness, documents, and points of contact for all site-specific technical documents by the support agency can be agreed upon by States and EPA in a SMOA.	Specific documents for State review of EPA-lead actions and timeliness are required by regulation with no opportunity for flexibility.
§300.505(a)(4)(ii)	CAs and SSCs	CAs and SSCs must be consistent with the general intent of SMOAs, if they exist.	SMOA outlines the general roles and responsibilities of the Remedial Project Manager and Support Agency Coordinator. CAs, SSCs and enforcement agreements can vary site-specifically as appropriate.	Roles, responsibilities and authorities must be discussed in the CA or SSC for Fund-financed actions and in all enforcement agreements for non-Fund-financed enforcement actions. These could vary significantly from document to document in one State.
§300.505(b)(2)	Activities Discussed During Consultation	EPA/State consultations established in the SMOA will address the following activities:	SMOA describes the process and timeframe of EPA/State consultation to determine priorities and lead and support agency designations for responses to be conducted during the next year. State and Region agree to process and involve each party.	Discussions must be initiated and documented in writing in the absence of a SMOA on an annual basis prior to development of funding for the next fiscal year. Amount of State involvement in the process determined by individual Region. No specific requirements for areas covered by consultation.
§300.505(b)(2)(i)		• Pre-remedial response actions;		
§300.505(b)(2)(ii)		• HRS scoring, NPL listing and deleter activities;		

## ANALYSIS OF SMOA RELATIONSHIP TO THE PROPOSED NCP

NCP Citation	Subject	Proposed NCP	Advantage of a SMOA	Action in Absence of a SMOA
§300.505(b)(2)(iii)		<ul style="list-style-type: none"> <li>• Remedial response actions;</li> </ul>		
§300.505(b)(2)(iv)		<ul style="list-style-type: none"> <li>• Enforcement actions;</li> </ul>		
§300.505(b)(2)(v)		<ul style="list-style-type: none"> <li>• Administrative Record compilation and maintenance;</li> </ul>		
§300.505(b)(2)(vi)		<ul style="list-style-type: none"> <li>• Related site support activities; and</li> </ul>		
§300.505(b)(2)(vii)		<ul style="list-style-type: none"> <li>• State ability to cost share and timing of payments.</li> </ul>		
§300.515(a)(2)	State Involvement in Remedial Planning	State agency acceptance of the support agency role during EPA lead. Fund-financed remedial planning activities may be documented in a SMOA and may not require site-specific documentation unless a CA is awarded for support activities.	<p>Site-specific letters from States are unnecessary for this purpose when a SMOA is used.</p> <p>Note: SSCs are never needed for remedial planning.</p>	State agency involvement must be documented on a site-specific basis by other means, i.e., letter or CA.
§300.515(d)(2)	State Involvement in RIFS	<p>SMOA will specify consultation process requiring lead agency to solicit potential ARARs and necessary TBCs at specified points in the remedial planning and remedy selection process.</p> <p>SMCA will identify timeframes for support agency response to lead agency requests.</p>	Length of time and points of request for identification of ARARs and TBCs may be established in a SMOA. SMOA may shorten or lengthen support agency response time for ARAR identification, and may solicit ARARs more frequently than minimum regulatory requirements.	Support agency must identify ARARs within thirty (30) days at two stages of the process: (1) after site characterization and (2) after preliminary screening of alternatives.
§300.515(g)	State Involvement in Remedial Actions	The lead and support agencies shall conduct a joint inspection of Fund-financed remedies at the conclusion of construction of the remedy, prior to the operational and functional phase of the remedial action.	SMOA could encourage additional RA interaction.	
§300.515(h)	State Involvement in Absence of SMOA	In the absence of a SMOA, the following requirements for State involvement in remedial response will apply:		



# ANALYSIS OF SMOA RELATIONSHIP TO THE PROPOSED NCP

NCP Citation	Subject	Proposed NCP	Advantage of a SMOA	Action in Absence of a SMOA
§300.515(h)(1)		<ul style="list-style-type: none"> <li>EPA/State consultations will occur, at least annually, to establish priorities and document in writing the leads for remedial responses in the upcoming year.</li> </ul>	If a SMOA is used, EPA and the State may commit to consult more often and specify the consultation arrangements and the role States may play in establishing priorities.	EPA and the State will consult at least annually. EPA will direct the consultation process, the basis for priority setting, and State involvement in the process.
§300.515(h)(2)		<ul style="list-style-type: none"> <li>Support agency shall respond to requests for ARARs within thirty (30) working days of receipt of the lead agency's request.</li> </ul>	If a SMOA is used, EPA and the State may agree to a different time limit for ARAR identification and communication.	Support agency must communicate ARARs within thirty (30) working days and at two points in the process.
§300.515(h)(3)		State will have a minimum of ten (10) and a maximum of fifteen (15) working days to review and provide comments to EPA on EPA-lead decision documents. State will be provided with five (5), but not more than ten (10) working days to review and comment on Proposed Plans.	If a SMOA is used, EPA and the State may agree to different parameters for the review period.	State must review documents within ten (10) to twenty (20) working days. No extensions should be granted. State must review and comment on Proposed Plans within five (5) to ten (10) working days. No extensions allowed.
§300.515(i)	Administrative Record Requirements	When a State is the lead agency for a Fund-financed response it will be responsible for compiling and maintaining the Administrative Record unless otherwise specified in the SMOA.	When the State is the lead agency for a Fund-financed response, EPA may compile the Administrative Record if EPA and the State mutually agree to this in the SMOA or they may agree to any other interaction on the Administrative Record.	The State, as lead agency, must maintain the Administrative Record.



## **INTERIM FINAL GUIDANCE ON PREPARATION OF SUPERFUND MEMORANDA OF AGREEMENT**

### **EXECUTIVE SUMMARY**

Interim Final Guidance on Preparation of Superfund Memoranda of Agreement (SMOAs) provides a general framework for SMOAs, while allowing for considerable flexibility in their preparation. The SMOA articles discussed correspond to the major points of EPA/State interaction set forth in the proposed National Oil and Hazardous Substances Pollution Contingency Plan (NCP). A SMOA should indicate the respective procedures that EPA and the State intend to use to carry out the proposed NCP.

The SMOA is intended to establish and/or clarify a working partnership between the lead and support agencies for hazardous substance responses, as authorized under Section 121 (f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA). It should clearly define program roles and responsibilities. The SMOA is not a legally enforceable document, and it cannot transfer money or authority to either a State or EPA. A SMOA cannot alter or circumvent CERCLA statutory or regulatory requirements, although the State and EPA may agree, in a SMOA, to modify certain proposed NCP minimum requirements where the proposed NCP so allows. EPA should agree to enter SMOA discussions if requested by a State, but EPA may not require a State to negotiate a SMOA. EPA may also draft SMOAs with Federally-recognized "Indian tribes" [(as defined in CERCLA Sec. 101 (36)), see OSWER Directive 9375.5-02: "Interim Final Guidance on Indian Involvement in the Superfund Program"].

### **BACKGROUND**

The Superfund Amendments and Reauthorization Act of 1986 (SARA) expanded the scope of State involvement in all phases of hazardous site response under CERCLA. This increased emphasis on the EPA/State partnership has highlighted the need for States and EPA to document their operating and interaction procedures in the Superfund program. The SMOA concept was developed to enhance communication between EPA and a State, and to clarify their respective roles and expectations with regard to the CERCLA response process.

### **PURPOSE OF GUIDANCE**

The purpose of this guidance is to assist the States and EPA Regions in developing SMOAs. SMOAs are generally optional and are not currently required under either the NCP or CERCLA. The following document provides direction and guidance on preparation of a SMOA, to those States that choose to draft and sign one. As such, this guidance does not describe Superfund operating procedures, but rather provides suggestions on what SMOAs may

contain and how they should be organized. EPA has developed this guidance as part of its effort to improve the quality of communication between Federal and State governments.

A SMOA is a management tool used to clarify the processes and procedures necessary to implement the Superfund program at both the Federal and State levels. These procedures are then implemented under, or can serve as the basis for developing, site-specific cooperative agreements (CAs) or Superfund State Contracts (SSCs). They can also serve as the basis for developing site-specific EPA/State enforcement agreements at non fund-financed National Priorities List (NPL) sites (e.g., State-lead enforcement). The SMOA shall not be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under CERCLA, as amended, or under the NCP or EPA assistance regulations. Unlike CAs and SSCs, however, SMOAs are not legally binding documents and may not be used to provide CERCLA assurances or to transfer Superfund monies. Furthermore, the SMOA may not be used to alter or circumvent CERCLA statutory requirements.

The signatory parties may review the SMOA at least once a year, during the annual review/planning process. It may be modified, in writing, upon the request of either of parties. All modifications to the SMOA must be mutually agreed upon in writing.

If drafted well, the body of a SMOA may not require significant revisions, except when there are changes in State or Federal laws and regulations. Some SMOAs currently under development may require modest modification after the NCP is finalized. The prospect of future revisions need not detract from the constructive role SMOAs can play in improving the quality of EPA/State interaction.

The following guidance presents a sample approach that States and EPA Regions may use to develop State-specific SMOAs. The SMOA articles presented here correspond to the major points of EPA/State interaction set forth in the proposed NCP. The examples, printed in *italics* throughout the document, illustrate one of many possible responses to these articles. The SMOA should indicate the respective procedures that EPA and the State intend to use in carrying out proposed NCP and other CERCLA requirements. States and EPA Regions need not replicate this guidance in developing their SMOAs. The guidance attempts to consider the major issues and points of EPA/State contact involved in a Superfund program. These topics should be considered during SMOA development and may be included in State-specific SMOAs.

## **SMOA CONTENTS**

A SMOA should contain several major sections including an introduction, a statement of purpose, an agreement concerning roles and responsibilities, signatures, and attachments, as necessary. These are described more fully below.

### **INTRODUCTION**

The introduction to the SMOA should include the names of the Federal and State agencies that are party to the SMOA, and should identify the statutory and regulatory authorities under which response activities are to be conducted (e.g., Federal and State statutes and regulations). This paragraph should also contain a statement emphasizing that the SMOA is not a legally enforceable document.

### **STATEMENT OF PURPOSE**

Each SMOA should contain a statement of purpose. This statement delineates the respective roles and responsibilities of each party as they relate to the conduct of the Superfund program cleanup at hazardous waste sites in the State.

SMOAs may serve many purposes; they are primarily intended to do the following:

- Identify the EPA/State relationship with respect to Superfund programmatic activities in order to construct and/or maintain a cooperative working relationship that best serves EPA and State interests;
- Define the process to designate the "lead agency" and "support agency" and the Remedial Project Manager (RPM) and Support Agency Coordinator (SAC) for each NPL site (these terms are defined in Subpart A of the proposed NCP);
- Define the process to designate sites for which the lead agency will request the support agency's concurrence on the recommended remedy;
- Identify procedures for close cooperation and communication between EPA and the State in planning response activities (annual planning process) so that the annual planning process will lead to optimal use of the parties' resources, minimizing conflicts and duplication of effort in conducting site-specific response activities;
- Identify the base level for review and oversight of site-specific technical deliverables, reports, studies, or other pertinent materials and documents;
- Outline the general procedures the Parties will follow when interacting with Federal facilities; if a particular Federal facility in the state is not involved, this should be noted.

- Set the general framework for the EPA/State relationship, so that site-specific EPA/State communication is enhanced; and
- Help structure interaction between EPA/State to foster response activities that are conducted in a manner consistent with CERCLA, proposed NCP, and applicable State laws and regulations.

## **AGREEMENT CONCERNING ROLES AND RE- SPONSIBILITIES**

The actual agreements identified and explained in the SMOA may be structured in several different ways. For example, an explanation of the planning and coordination process might be very lengthy, whereas an article discussing lead agency designation might be simple and concise. The following subsections provide suggestions on content for the SMOA articles. These are only examples and may be adapted to meet your specific needs.

### **Lead State Agency Designation**

This article of the SMOA identifies which State agency is the lead State agency for Superfund program activities, as required by Subpart B of the proposed NCP. The lead State agency will be the State representative (i.e., the single point of contact with EPA) for all Superfund hazardous waste site responses. The article may also identify the other State agencies and parties that may have a significant role in response and with whom the lead State agency may coordinate. Examples include the State public health organization, the State Attorney General's Office, the Federal and State Natural Resource Trustees, Section 104 (b)(20) of CERCLA, as amended.

### **Site-Specific Designation of Lead/ Support Agency**

This article of the SMOA establishes a timeframe and procedure for designating site-specific lead and support agencies and details a process for reviewing and making appropriate lead/support agency designation changes. The factors considered when making a lead decision can also be listed.

A sample article is presented below.

*If the State applies for the lead agency designation, EPA will, after consultation with the State, make a final decision. Some factors EPA will consider in selecting the lead agency are: staffing and current workload, technical expertise, contracting capability, fiscal management, past performance and legal authorities.*

### **Remedial Project Manager/Support Agency Coordinator Designations**

This article of the SMOA specifies a timeframe, process, and method of documenting RPM/SAC designations pursuant to the proposed NCP.

A sample article is provided below.

*The lead agency will designate an RPM and the support agency will*

*designate an SAC (if possible) whenever a site is determined to have a high potential for listing on the NPL. The agency identifying the potential for the site's inclusion on the NPL may initiate the RPM/SAC designation process.*

#### **Support Agency Concurrence**

This article of the SMOA specifies the process for identifying and documenting those sites for which EPA and the State agree to seek support agency concurrence on the lead agency's Record of Decision (ROD). Normally, the concurrence designation should be made during the annual planning process.

#### **Points of Contact**

This article of the SMOA specifies the EPA/State internal chain-of-command used in conducting the Superfund program.

- **Overall Program Communication, Coordination, and Planning**

This section indicates, for example, that the EPA Branch Chief and State Superfund Program Manager are responsible for overall program communication, coordination, and planning; it also outlines the process to be used. This process outline contains sufficient detail concerning points of EPA/State interaction, and includes provisions for ensuring that coordination and communication occur smoothly and expeditiously.

- **Remedial Project Manager/Support Agency Coordinator Interaction**

This section outlines the general roles, responsibilities, and organizational authorities (if different from the authorities specified in the proposed NCP) of both the RPM and the SAC. It specifies their responsibilities for intra- and inter-agency coordination, a process to be followed to ensure informal and frequent communication, and their administrative/fiscal tracking responsibilities compared with the responsibilities of other officials.

#### **Planning Coordination Processes**

This article of the SMOA specifies procedures the lead and support agencies will use to plan and coordinate various tasks under the Superfund program. It can be especially useful to outline the annual planning and communication procedures for program coordination.

- **Annual Planning Process**

This section outlines the procedures that the State and EPA will follow to conduct annual program planning. It lists the documents that will be prepared during annual planning, such as the lead/support agency designations, the Superfund Comprehensive Accomplishments Plan (SCAP), site enforcement strategies/timeframes, and any others that may be appropriate.

ate. See the Attachments portion of this document for a list of documents that EPA and the State may wish to prepare during annual planning. In addition, the section establishes and describes, in detail, the process that will be used each year to develop/revise these planning documents, mechanisms for communication of information and coordination, and timing.

- **Ongoing Program Coordination**

This section sets forth the procedures that will be followed to establish and maintain two-way communication, including the exchange of information on program status to ensure ongoing, continuous program coordination.

It establishes the mechanism that the EPA Branch Chief and the State Superfund Program Manager, for example, will use to assemble assigned staff to discuss site-specific details. The section also establishes both the method and frequency of exchange of program status data.

Sample sections are provided below.

#### Communication

*The State and EPA intend that ongoing Superfund program communication be accomplished in accordance with the following procedures:*

*1 - EPA and State program representatives intend to meet [insert place and approximate frequency of meetings] to inform each other of ongoing and future activities and to discuss and plan for mutual goals.*

*2 - EPA and State program representatives intend to engage in telephone conference calls whenever either party decides there is the need for such a call. These calls will provide opportunities to discuss ongoing and upcoming activities, to discover and resolve problems between the two parties, and to maintain two-way communication.*

#### Program Status Data Management/Exchange

*The State and EPA recognize and agree upon the need for a simple, effective system for compiling and maintaining Superfund program status data.*

*The parties agree to exchange Superfund program status data by [insert method (i.e., written or electronic mail)] at least on a [insert frequency] basis.*

*The parties will work together to identify problems and to recommend solutions to the data exchange system as necessary.*



- **Non-Site-Specific Documents**

This section itemizes the non-site-specific documents, such as guidance and policy documents, that must be transferred between EPA and the State and it identifies the EPA and State staff positions responsible for this exchange.

An example is provided below.

*The EPA [title of position] is responsible for providing the State [title of position] with copies of all non-site-specific EPA guidance, policy, regulations, and laws that are relevant to Superfund activities.*

*The State [title of position] is responsible for providing the EPA [title of position] with copies of all non-site-specific State guidance, policy, regulations, and laws that are relevant to Superfund activities.*

- **Community Relations and Technical Assistance Grants**

This section of the SMOA specifies the general principles and procedures the State and EPA will follow in conducting community relations activities and soliciting public participation. This section may also specify the roles and responsibilities of the parties administering Technical Assistance Grants.

Examples are provided below:

*1 - Numerous government agencies and groups, including county, city, and local authorities, affected citizens, nearby property owners, environmental groups, and the media, must be informed and given meaningful opportunities to participate in the decision-making process during the site investigation and cleanup.*

*While recognizing that Federal interests and State interests will not always be identical, EPA and the State agree not to emphasize or highlight their disagreements during community relations activities.*

*2 - The preparation of press releases and contacts with the media are normally responsibilities of the lead agency. It is the responsibility of the lead agency's RPM to notify the support agency concerning community relations activities. To the extent possible, a press release should be scheduled in advance and issued jointly. The support agency will be asked to comment prior to release, and copies of the final document will be provided. Press releases will acknowledge the support agency's role whenever appropriate. Occasionally, the support agency may need to issue a press release. In these cases, the*

*support agency will follow similar procedures in notifying the lead agency of its intent to issue a press release.*

*3 - The lead agency will chair all public meetings. The support agency is expected to attend and possibly participate actively in all public meetings, where practicable, unless the RPM and SAC agree that it is not necessary or appropriate.*

## **Removal Actions**

This article of the SMOA specifies the procedures that will be followed regarding notification, consultation, and negotiation of State provisions for post-removal site control.

### **• Notification**

This section specifies that EPA and the State will notify each other of their intent to conduct removal actions at NPL and non-NPL sites as soon as possible after either Party determines such action is necessary. This section also identifies the EPA and State representatives responsible for notifying the other party.

### **• Consultation Process**

This section defines the procedures that will be followed to facilitate EPA/State consultation on the nature of any EPA-lead removal action before EPA commences the removal action. The process generally defines the manner in which EPA will inform the State of the technical nature of the removal action, the timing for the consultation period, and the manner in which the State will review and provide its comments. The section also includes a provision for determining situations (i.e., emergencies) in which the consultation process could or should be waived.

### **• Post-Removal Site Control**

EPA will obtain the State's commitment to post-removal site control before the removal action whenever practicable. However, the procedure should be structured to allow negotiation during a removal action when it is necessary to avoid delay in initiating a removal action.

## **Enforcement**

This article of the SMOA describes enforcement expectations and policy, and describes the general nature of the EPA and State relationship when pursuing potentially responsible party (PRP) site cleanup commitments. This article should also reference State enforcement authorities and the degree of reciprocity between the State and EPA.

The following article must be included in the SMOA:

*This agreement does not limit the ultimate enforcement authority of EPA or the United States Government under CERCLA.*

Samples of additional articles which may be included in a SMOA are provided below.

*1 - EPA and the State agree with the established principle that negotiated response actions with qualified PRPs are essential to an effective program for the cleanup of NPL sites. An effective program depends on a balanced approach relying on a mix of Fund-financed cleanup, voluntary agreements reached through formal negotiations, and litigation when necessary and appropriate.*

*2 - EPA and the State agree that response action settlements reached with PRPs will be set forth in enforceable agreements. For the purposes of this SMOA, an enforceable agreement means issuance of an administrative order or execution of a consent order or decree (or specify other State-specific mechanism that is legally enforceable). Enforcement actions taken in response to non-compliance with an enforceable agreement will be timely and pursued to resolution in accordance with applicable State or Federal laws, applicable policies and guidelines, and the terms of the particular agreement.*

**NOTE:** Three-party agreements [EPA/State/PRP] must be embodied in Federal judicial consent decrees. Moreover, CERCLA requires United States Department of Justice review of any covenants-not-to-sue agreed to by EPA.

*3 - Two-party (i.e., EPA or State with PRP) negotiation, settlement, and execution is preferred over three-party (i.e., EPA/State/PRP) negotiation, settlement, and execution because it is generally more efficient. However, when EPA is designated as the lead agency, EPA will (a) notify the State regarding the scope of response actions, and (b) provide the State an opportunity to be involved in negotiations with PRPs and to be party to any settlement, pursuant to CERCLA Section 121(f)(1)(F).*

*4 - EPA and the State will review and designate the lead agency and the support agency for enforcement actions at NPL sites subject to relevant criteria during the annual planning process. The State should get lead agency designation only upon EPA determination that it has demonstrated sufficient State authorities and other program capabilities.*

*5 - The lead agency will provide notice to the support agency as to the start of negotiations with PRPs.*

6 - It is the lead agency's responsibility to identify and notify potentially responsible parties of a planned remedial investigation/feasibility study (RI/FS) and to determine the willingness and ability of the PRP to conduct the RI/FS. The lead agency will also send a remedial design/remedial action (RD/RA) notification letter to PRPs at the completion of a RI/FS.

7 - The lead agency for a site generally will be responsible for all site specific communications with PRPs. The support agency will not communicate with PRPs concerning the site without prior notice to the lead agency.

#### **Federal Facilities**

This section outlines the process that EPA will use to provide for State involvement in Federal facility remedial actions. Discussion may include appropriate staff contacts and methods of initial contact concerning state involvement. Pending promulgation of the proposed NCP, as well as Subpart K - Federal Facilities of the proposed NCP (to be proposed and promulgated separately), State personnel should consult their EPA regional counterparts concerning current EPA policy on response at Federal facilities.

#### **Other Areas of Coordination**

This article of the SMOA addresses additional processes which require EPA/State coordination. It is useful to outline the steps in detail, knowing that the description can be revised as the processes evolve and change.

- **Superfund Comprehensive Accomplishments Plan (SCAP)**

This section may specify the procedures that each party will follow in developing the annual SCAP. The SCAP is the central mechanism for planning, tracking and evaluating Superfund program activities. SCAP development procedures should include the timing of the initial contact between the Region and the State, follow-up actions on Headquarters' requests and steps for revising the SCAP during the year. The section also identifies the titles of the State and Regional contacts for ongoing SCAP coordination. This coordination process also should include discussion of the State's commitments under any similar State planning and tracking system.

- **Applicable or Relevant and Appropriate Requirements (ARARs)/To Be Considered (TBCs)**

This section describes the procedures and timeframes for soliciting/identifying, exchanging, and certifying ARARs/TBCs, taking into consideration the process established in the proposed NCP. It should indicate the points in the response process at which ARARs/TBCs would normally be solicited/identified, the points of contact (usually the RPM and SAC) for solicitation/identification, and steps taken when disagreements arise over ARARs/TBCs if different from Resolution of Disputes (see page 12 of this

guidance). The section may also include a recognition that the agreed-upon base level procedures may be modified in Cooperative Agreements or SSCs depending upon site-specific circumstances.

- **Administrative Record**

This section outlines aspects of the Administrative Record.

- **Establishing the Administrative Record**

This paragraph specifies that the lead agency is responsible for compiling and maintaining the Administrative Record and cites the office and staff position responsible for compiling and maintaining site-specific Administrative Records.

- **Support Agency Participation**

This paragraph defines the extent of support agency involvement in establishing the Administrative Record, and may also list site-specific documents in the file which should be transmitted by the lead agency to the support agency. This paragraph may also address support agency review of the Administrative Record for completeness.

- **State Takeover of Long-Term Response Actions (LTRA)**

This section describes the coordination of State takeover of LTRAs. It may indicate that EPA and the State agree that, at a site requiring onsite or offsite actions to restore ground or surface water quality, the State will take over operation of these activities at the site as soon as possible after EPA has determined construction is complete. States may assume the lead for this portion of remedial action through a cooperative agreement.

## **Consultation, Agreement, and Concurrence Processes**

This article of the SMOA specifies processes pertaining to consultation, agreement, and concurrence. Subpart F of the proposed NCP also contains procedures to be followed in the absence of a SMOA.

- **NPL Listing (Consultation/Deferred Listing)**

This section defines procedures and points of contact for EPA/State consultation concerning sites to be proposed for listing on the NPL.

- **Draft FS and Proposed Plan (Agreement)**

This section defines procedures, timeframes, and points of contact to facilitate agreement on or resolution of significant comments regarding a draft FS and proposed plan for a remedial action.

- **NPL Deletion (Concurrence)**

This section defines the procedures and points of contact for concurrence on or resolution of outstanding issues concerning deleting sites from the NPL.

- **ROD Concurrence**

This section defines the procedures, timeframes, and points of contact for concurrence on RODs.

### **Support Agency Site-Specific Review/Oversight**

Generally, EPA intends for the lead agency to be responsible for developing technical documents during the RI/FS and the RD/RA at a site. Therefore, this article of the SMOA establishes the procedures, timeframes, and points-of-contact for all site-specific technical document review/oversight by the support agency. Support agency review/oversight of site-specific technical documents should fall into one of the following three categories:

1 - Review and approve: site work or the next phase of response does not proceed until the support agency reviews and provides written approval.

2 - Review and comment: site work or the next phase may proceed but the lead agency should attempt to incorporate support agency comments (if any), as appropriate, into the site work.

3 - Submit for information and maintenance of support agency files: the lead agency submits a document to the support agency for information and maintenance of the support agency file. This procedure may also be tied to the Regional office's participation in the establishment of the Administrative Record.

These categories may not apply to all State/EPA relationships. The article lists the site-specific documents and the category into which each document will fall as a general statement of the degree of support agency review/oversight. This article should also recognize that the agreed-upon base level of support agency review/oversight activity could and should be modified in CAs or SSCs for specific sites (see Attachment 1 for an example of how to document support agency strategy).

### **Resolution of Disputes**

This article of the SMOA establishes a State-specific process to resolve disputes that may arise regarding implementation of the procedures specified in a SMOA or any site-specific agreements. Various procedures may be developed and described; the process explained in the preamble to the proposed NCP is one procedure that may be used as a guide. (Additional guidance is forthcoming from the Office of Waste Programs Enforcement (OWPE).

concerning the resolution of disputes between EPA and a State when PRPs are conducting response actions under a Federal consent decree.)

The example provided below is based on the proposed NCP Preamble.

*In the event of disputes between EPA and the State concerning the implementation of any procedures specified in this SMOA or any site-specific response action dispute, the RPM and SAC will attempt to resolve such disputes promptly. If disputes cannot be resolved at this level, the problem will be referred to the supervisors of these persons for further EPA/State consultation. This supervisory referral and resolution process will continue, if necessary, to the level of [title of head of State lead agency] and Regional Administrator, EPA, Region [ ]. If agreement still cannot be reached, the Region and the State can jointly refer the dispute to the Assistant Administrator for Solid Waste and Emergency Response, who will resolve the dispute.*

**Exclusion of Third Party Benefits**

Each SMOA must contain the following article:

*This Agreement is intended to benefit only the State and EPA. It neither expands nor abridges the rights of any party, including potentially responsible parties, not signatory to this Agreement.*

**Negation of Agency Relationship**

Each SMOA must contain the following article regarding the negation of agency relationship:

*Nothing contained in this SMOA shall be construed, either expressly or by implication, to make EPA or the State the other's agent.*

**SIGNATURES**

Although the SMOA is not a legally binding document, it should be signed by the participating parties.

A sample format is illustrated below.

*For the State of \_\_\_\_\_*

*(Lead State Agency Director)*

*(Date)*

*For the Environmental Protection Agency*

*(Regional Administrator)*

*(Date)*

**ATTACHMENTS**

Attachments to SMOAs generally address site-specific issues related to EPA and State interactions. They can be drafted separately from the body of the SMOA, allowing for changes as frequently as necessary. EPA and the State should mutually decide which of the following topics need to be addressed further in an attachment.

**Support Agency  
Site-Specific  
Review/Oversight  
Strategy**

This document establishes the procedure, timeframes, and points-of-contact for all site-specific technical review/oversight by the support agency (i.e., review and approve, review and comment, and submit for information and maintenance of support agency files). See Attachment 1 for sample timeframes.

**Enforcement**

This document details site enforcement strategies and timeframes to ensure Responsible Parties' commitments to cleanup, and may be used to satisfy the proposed NCP Section 300.505(b)(3) requirement of supplementing SMOAs with site-specific enforcement agreements at non-Fund-financed sites where the State is designated lead agency. See Attachment 2 for a sample format.

**Site-Specific  
Designation of  
Lead/Support  
Agency**

This document establishes the timeframe, procedure, and form of documentation for designating site-specific lead and support agencies. It also details a process for reviewing and making appropriate lead/support agency designation changes.

**Support Agency  
Concurrence**

Sites for which EPA and the State agree to provide opportunities for support agency concurrence on the lead agency's ROD should be identified and documented here.

**Processes to be  
Defined**

This document specifies processes that may be implemented by the State including:

- Procedures for developing/revising the annual SCAP
- Procedures and timeframes for soliciting/identifying, exchanging, and certifying ARARs/TBCs
- Procedures for establishing Administrative Records and making them available to the public.



**Processes**

- Sites proposed for the NPL
- Draft FS and proposed plan for a remedial action
- Sites proposed for NPL deletion
- RODs

**Status of  
Hazardous Waste  
Site Problem**

This document summarizes the status of the State's hazardous waste site situation. It may include the number of sites (NPL and non-NPL), the environmental media potentially affected, and other information that may help describe the size and extent of the State's problem.

**Status of State's  
Superfund -  
Program**

This document describes the current status of the State's Superfund program and its anticipated future roles and goals. It may include descriptions of the current program, the levels of sophistication/maturity achieved, and types and number of State actions taken at non-NPL sites leading to site cleanup. Information regarding the future role of the State in Superfund activities, methods of increasing State response capability, program directions, and action to coordinate the RCRA/CERCLA programs may also be summarized.

## ATTACHMENT 1

# EXAMPLE OF SUPPORT AGENCY STRATEGY FOR REVIEW/OVERSIGHT OF RESPONSE PROCESS DELIVERABLES

The SMOA may include, as an attachment, a listing of response process deliverables, reports, and documents, together with a designation of the support agency level of review/oversight activity (i.e., review and approve; review and comment; submit for information and file maintenance). The attachment also specifies the support agency review/oversight activity turn-around timeframe if it differs from the proposed NCP or if it is not included in the proposed NCP.

Once timeframes are negotiated and agreed upon, the attachment represents the base level of understanding between a State and EPA concerning support agency review/oversight activity. This base level can and should be modified as appropriate in cooperative agreements or SSCs, depending upon site-specific considerations.

Example formats are provided below. (A sample format for Federal-lead enforcement sites is forthcoming from OWPE.)

## FUND-FINANCED SITES

<u>Item Reviewed by Support Agency</u>	<u>Type of Review/ Oversight Activity</u>	<u>Turnaround Timeframe</u>
1. PA Reports	Review/Comment	10 working days
2. SI Reports	Review/Comment	15 working days
3. HRS Scoring Package	Review/Consultation	30 days
4. Draft RI/FS Work Plans	Review/Comment	10 working days
<ul style="list-style-type: none"> <li>• RI Work Plans</li> <li>• Sampling and analysis plans</li> <li>• Community relations plans</li> <li>• Health and safety plans</li> </ul>		
5. Preliminary site characterization summaries	Review/Comment	15 working days
6. Draft ATSDR Health Assessments	Review/Comment	15 working days
7. Draft FS Phase I and II Reports (Alternatives development/screening)	Review/Comment	15 working days
8. Draft Treatability Reports (additional site characterization information, bench/pilot studies)	Review/Comment	15 working days
9. Draft RI/FS Reports (including detailed analysis of alternatives) with statement of proposed plan	Review/Comment	30 working days

**FUND-FINANCE SITES** (continued)

- |     |   |                                    |                        |
|-----|---|------------------------------------|------------------------|
| 10. | <b>Final RI/FS Reports</b>              | <b>Submit for file maintenance</b> |                        |
| 11. | <b>Draft Records of Decision (RODs)</b> | <b>Review/Concurrence</b>          | <b>15 working days</b> |
| 12. | <b>Executed RODs</b>                    | <b>Submit for file maintenance</b> |                        |

**ENFORCEMENT SITES** (no Federal funds)

- |     | <b><u>Item Reviewed by Support Agency</u></b>   | <b><u>Type of Review/ Oversight Activity</u></b> | <b><u>Turnaround Timeframe</u></b> |
|-----|---|--|------------------------------------|
| 1.  | <b>Enforceable Agreements (such as the Administrative Order or Consent Decree)</b>  | <b>Submit for information/ file maintenance</b>  |                                    |
| 2.  | <b>Final RI/FS Work Plans</b><br><ul style="list-style-type: none"> <li>• RI Work Plans</li> <li>• Sampling and analysis plans</li> <li>• Community relations plans</li> <li>• Health and safety plans</li> </ul> | <b>Submit for information/ file maintenance</b>  |                                    |
| 3.  | <b>Final site characterization summaries</b>  | <b>Submit for information/ file maintenance</b>  |                                    |
| 4.  | <b>Draft ATSDR Health Assessments</b>   | <b>Review/Comments</b>                           | <b>20 working days</b>             |
| 5.  | <b>Final FS Phase I and II Reports (Alternatives development/ screening)</b>  | <b>Submit for information/ file maintenance</b>  |                                    |
| 6.  | <b>Final Treatability Reports (additional site characterization information, bench/pilot studies)</b>   | <b>Submit for information/ file maintenance</b>  |                                    |
| 7.  | <b>Draft RI/FS Reports (including detailed analysis of alternatives) with statements of proposed plan</b>   | <b>Review/Comments</b>                           | <b>30 working days</b>             |
| 8.  | <b>Final RI/FS Reports</b>  | <b>Submit for information/ file maintenance</b>  |                                    |
| 9.  | <b>Draft Records of Decision (RODs)</b>   | <b>Review/Concurrence</b>                        | <b>15 working days</b>             |
| 10. | <b>Executed RODs</b>  | <b>Submit for information/ file maintenance</b>  |                                    |

## ATTACHMENT 2

## EXAMPLE OF EPA/STATE ENFORCEMENT SITE STRATEGY

The SMOA may include, as an attachment, the details of the State/EPA enforcement site strategy. sample format is provided below.

Confidential: Exempt From Public Disclosure

Site Name: XYZ Corporation

Lead Agency: State Pollution Control Agency

Response Phase: Remedial Investigation/Feasibility Study (RI/FS)

Objective: Convince (or compel) the XYZ Corporation and other potential responsible parties to conduct a RI/FS that fully meets the National Contingency Plan and guidance requirements in a timely manner at the site.

Strategy: Subsequent to notice letters from both the State Agency and EPA, negotiate with XYZ Corporation for a three-phase consent order. Phase 1 will be for XYZ to prepare a RI work plan (sampling plan, safety plan, etc.) that is approved by the State Agency. Phase 2 is for XYZ to implement the approved RI work plan. In Phase 3 XYZ Corporation will complete the feasibility study. If XYZ does not agree to the consent order, the State Agency will immediately seek funding from EPA to conduct the RI/FS using CERCLA funds.

## Enforcement Action Schedule:

<u>Action</u>	<u>Date</u>
1. Complete PRP search activities	August 1, 1989
2. Issue Notice Letters - EPA & State agency	September 30, 1989
3. Begin formal RI/FS negotiations	November 15, 1989
4. Execute RI/FS consent order or terminate RI/FS negotiations	February 1, 1990
5. If no consent order submit CA application	March 30, 1990

Authority to be used by lead agency: (Appropriate state statutes).

Conditions for support agency enforcement intervention: Failure of the State Agency to substantially meet the enforcement action schedule or significant violation of a consent order by the PRP.

## Signatures:

State Superfund Program Manager

date

EPA Superfund Branch Chief

date

Note: This agreement will be updated upon 1) delays exceeding schedule, 2) change in lead agency designation, 3) significant change in objective or strategy.